

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

IN RE: C.R. BARD, INC.,
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL 2187

THIS DOCUMENT RELATES TO:

Gaither v. C. R. Bard, Inc. et al

Civil Action No. 2:13-cv-19227

MEMORANDUM OPINION AND ORDER

Pending before the court is the Motion to Dismiss With Prejudice or in the Alternative Motion for Show Cause Order for Failure to Serve a Plaintiff Profile Form or Plaintiff Fact Sheet, filed by C. R. Bard, Inc. (“Bard”) on December 15, 2017 (“Motion”) [ECF No. 32].

Bard moves for relief alleging that the plaintiff failed to provide a completed Plaintiff Profile Form or Plaintiff Fact Sheet. In moving to dismiss, Bard filed a motion identical to the one before the court in over one-hundred cases. In every motion filed Bard’s Certification of Service states:

I hereby certify that on December 15, 2017, I caused the foregoing document to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in these cases.

Bard’s Mot. to Dismiss with Prejudice or in the Alternative Mot. for Show Cause for Failure to Serve a Pl. Profile Form or Pl. Fact Sheet at 10.

As stated, Bard can only certify delivery of the Motion to those parties that

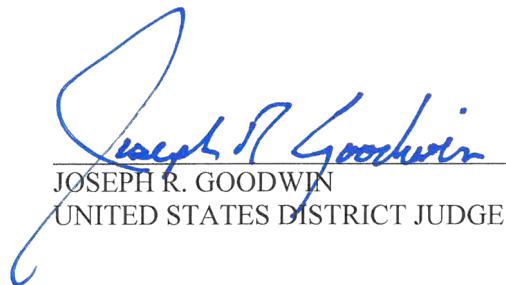
have registered to receive service through the CM/ECF system. Here, according to the record in this case, the plaintiff has not registered to receive service by electronic means. *See Fed. R. Civ. P. 5(b)(2)(E)* (stating that service by electronic means is permissible only when the person to be served consents in writing).

Before the court can address the merits of the Motion, Bard must certify that it has served these documents on the plaintiff appropriately. *See Fed. R. Civ. P. 5(a)(1)* (requiring pleadings filed after the original complaint to be served on every party); *Fed. R. Civ. P. 5(d)(1)* (“Any paper . . . that is required to be served—together with a certificate of service” must be filed “within a reasonable time after service.”).

Therefore, it is **ORDERED** that Motion to Dismiss With Prejudice or in the Alternative Motion for Show Cause Order for Failure to Serve a Plaintiff Profile Form or Plaintiff Fact Sheet is **DENIED without prejudice**.

The court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 21, 2018


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE